

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

SOLEDAD HOLGUIN)	
Claimant)	
V.)	
)	
CARGILL MEAT SOLUTIONS CORP.)	Docket Nos. 1,056,891,
Respondent)	1,056,892 & 1,056,893
AND)	
)	
CHARTIS CASUALTY COMPANY)	
Insurance Carrier)	

ORDER

Claimant requested review of Administrative Law Judge Pamela Fuller's September 18, 2014 Award. The Board heard oral argument on January 21, 2015.

APPEARANCES

Stanley R. Ausemus, of Emporia, appeared for claimant. D. Shane Bangerter, of Dodge City, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

This appeal involves three separate docketed claims. In Docket Number 1,056,893, claimant alleges right hand, right arm, right shoulder and neck injuries on February 11, 2011, after a piece of meat fell, hit her head and struck her right arm. In Docket Number 1,056,892, claimant alleges head and neck injuries on June 16, 2011, after a piece of meat fell and struck her head. In Docket Number 1,056,891, claimant alleges right hand and right thumb injuries on July 12, 2011, from pulling product with a hook.

The judge found claimant suffered neck and shoulder injuries as a result of the June 16, 2011 accident, and such accident was the prevailing factor in causing her injuries and resulting impairment of 13% permanent partial impairment to the body as a whole. The judge also found claimant suffered no impairment as a result of the February 11, 2011 and July 12, 2011 accidents.

Claimant argues her hired expert, Dr. Murati, had the most persuasive opinions because all three accidents caused or contributed to her injuries. Claimant asserts her functional impairment should be at least 25% to the body as a whole and assigned to the February 11, 2011 date of accident. Claimant argues the court-ordered physician failed to account for his client's complex regional pain syndrome/reflex sympathetic dystrophy and there is no reason to elevate the diagnosis or impairment rating opinions of the court-ordered physician over other testifying physicians.

Respondent maintains the judge's ruling should be affirmed, but argues claimant's treating physician's opinion regarding claimant's permanent impairment should be partially adopted, but no additional rating is allowed for complex regional pain syndrome/reflex sympathetic dystrophy.

The sole issue on review is: what is the nature and extent of claimant's disability?

FINDINGS OF FACT

Claimant has worked for respondent since 2007. On February 11, 2011, a 21 pound piece of meat fell off the belt, hit the side of claimant's hard hat and landed on her right forearm. Claimant testified she experienced pain and discomfort from the back of her head and extending from the bottom of her right ear into the right shoulder. She completed a statement indicating the piece of meat hit her on her head and arm. She obtained treatment at Cargill Meat Solutions Health Service, where hot and cold treatments were applied to her neck and right shoulder. Claimant testified she always had neck pain and headaches after her February 11, 2011 accidental injury.

The nurse's notes from that date reflect claimant complained of right forearm and right upper torso pain which she rated as a 7 out of a 0-10.¹ The nurse reported swelling and redness on the right forearm and swelling on the right upper torso. Claimant denied any neurological, wrist, finger, hand, elbow, shoulder or neck symptoms. Hot and cold treatments were applied and claimant was instructed to take Tylenol for pain. Following the accident, claimant completed an "Employee Statement of Injury" indicating that her right forearm had been injured.²

On February 14, 2011, claimant returned to respondent's nurse's station complaining of pain in the right forearm and upper torso. She denied any neurological, hand or neck symptoms. Claimant was provided hot and cold treatments and advised to take ibuprofen for pain.

¹ All references to pain are on a 0-10 pain scale.

² R.H. Trans., Resp. Ex. 1; see also R.H. Trans. at 31-32.

On February 16, 2011, claimant saw Danny Briggs, RPAC, at the Occupational Health Clinic, for evaluation of right forearm and upper torso pain. Claimant complained of pain across her right clavicle into the shoulder and from the right elbow down through the hand and digits of the hand. Mr. Briggs diagnosed claimant with right shoulder and elbow tendinitis. She was told to stretch/ice daily at home and take ibuprofen for pain.

On February 27, 28 and March 1, 2011, claimant returned to the nurse's station for treatment of right hand pain at Mr. Briggs' direction. Stretching exercises were performed and claimant was told to continue taking medication. On March 1, claimant stated: "I am only having a small amount of pain when working with big pieces that I have to use more strength, but only a little. I feel much better. These straps for my arm are really helping me."³ However, claimant testified she never told anyone at the nurse's station that she was feeling better and was not having as much pain.

On March 2, 2011, claimant returned to Mr. Briggs. Claimant reported being "much better"⁴ and indicated she no longer required medication. Mr. Briggs released her at maximum medical improvement. Between March 2 and June 16, 2011, claimant sought no further treatment based on Cargill's records. However, claimant testified she did have treatment at Cargill during that time, which included her obtaining pills.

On June 16, 2011, claimant injured her right shoulder and neck when a piece of meat weighing 19 pounds fell and struck the top of her forehead. Claimant experienced pain from the bottom of her neck into the front of her chest, as well as dizziness. Claimant testified her neck hurt prior to this accident. Claimant was taken to the nurse's station where she received hot and cold treatments. Following the accident, an "Employee Statement of Injury" was completed on claimant's behalf by an interpreter who marked that her neck, shoulder and head had been injured.⁵

On June 17, 2011, claimant saw Mr. Briggs for neck pain because a piece of meat fell and hit her in the head or neck the prior day. Mr. Briggs noted severe muscle spasms throughout claimant's cervical spine, paraspinals and down into the upper trapezius muscles, with limited cervical spine range of motion due to pain. Mr. Briggs diagnosed claimant with muscle spasms and recommended ibuprofen, Flexall and stretching exercises.

Claimant returned to Mr. Briggs on June 29, 2011, complaining of severe neck pain whenever she lifted anything heavy. Mr. Briggs ordered x-rays of claimant's cervical spine and right clavicle. Claimant was instructed to followup in two weeks.

³ Stipulation (filed Sep. 10, 2014) at 43.

⁴ Stipulation (filed Sep. 10, 2014) at 5.

⁵ R.H. Trans., Resp. Ex. 2; see also R.H. Trans. at 30.

On July 12, 2011, claimant was pulling meat from one belt to another when she experienced pain in her right wrist and thumb. Claimant went to the nurse's station and reported "the pain started little by little and it kept increasing and I noticed that my hand was inflamed [sic] and the pain more severe."⁶ Hot and cold treatments were provided and claimant was instructed to take ibuprofen. Following the accident, claimant completed an "Employee Statement of Injury," indicating that her right hand had been injured.

Claimant returned to the nurse's station on July 14, 15 and 18, 2011, reporting no improvement in pain. At each of these visits, claimant was given hot and cold treatments.

On July 20, 2011, claimant saw Mr. Briggs for right wrist, elbow, forearm, hand and thumb pain, as well as for her right shoulder and neck pain. Mr. Briggs noted claimant's complaints might be "arthritic in nature instead of injury."⁷ Mr. Briggs recommended claimant continue ibuprofen.

On August 3, 2011, claimant told Mr. Briggs her pain was not getting better. Mr. Briggs diagnosed claimant with a cervical spine strain, right elbow tendinitis and a right forearm strain. Mr. Briggs ordered physical therapy and prescribed Celebrex.

On August 24, 2011, claimant returned to Mr. Briggs for right shoulder and neck pain. She complained of severe pain in her right shoulder and along the anterior portion of her chest from her right shoulder down to her fingers. Claimant also reported an unrelated August 9 injury involving her upper back or thoracic spine. Claimant had no cervical spine muscle rigidity, but was reluctant to engage in active cervical spine range of motion. Mr. Briggs diagnosed claimant with pain with palpation of the right elbow and subjective complaints of pain with even light touch throughout the cervical spine, upper chest, right shoulder, arm, forearm and hand without objective findings. Mr. Briggs noted claimant refused medication and refused to return to physical therapy. Mr. Briggs discontinued physical therapy and ordered x-rays of the right shoulder, right elbow and right wrist, in addition to right shoulder and cervical spine MRI studies.

The MRIs were taken on August 31, 2011. The cervical spine MRI showed: (1) mild degenerative disc and facet joint disease without central spine stenosis or right neural foraminal stenosis and (2) mild left neural foraminal stenosis at C6-7 which did not correlate with claimant's presentation. The right shoulder MRI showed: (1) mild to moderate AC joint osteoarthritis; (2) predisposition to impingement syndrome, with moderate subacromial edema; (3) no rotator cuff tear, but suggestion of a mild tear or tendinosis of the supraspinatus tendon; (4) no glenohumeral joint effusion; and (5) abnormal signal in superior labrum suggesting mucoid degeneration without avulsion.

⁶ Stipulation (filed Sep. 10, 2014) at 45.

⁷ Stipulation (filed Sep. 10, 2014) at 10.

On September 7, 2011, claimant returned to Mr. Briggs because of continued and unimproved right shoulder, neck, right arm and thoracic spine pain. Mr. Briggs stated:

Due to the degenerative changes throughout the cervical spine and shoulder area and the employee's statement that the pain just started in the top of her head once she got hit and then several days later she noticed pain in her neck and down into her shoulders and back. Really no mechanism of injury. She stated in her initial statement that the pain just started in her shoulder. Due to the fact that she has all these degenerative changes and the pain just started in this right shoulder, I feel like the prevailing factor for her pain is the degenerative disease but not the slight thump that she received on her head. I feel like she should go see her personal physician and have this treated. With that said because she has filed this worker's compensation claim, I am going to refer her out for these two injuries and see if a specialist can find a cause other than what I have seen during my physical examinations.⁸

On October 12, 2011, claimant returned to Mr. Briggs. Claimant indicated she still had pain in her neck and right shoulder from the June 2011 accident. She stated her wrist and forearm still hurt from the July 2011 accident and the pain never went away.

On October 19, 2011, claimant told Mr. Briggs her pain was not getting better and stated, "[n]othing seems to change the pain from physical therapy to medications to job modification."⁹ Mr. Briggs recommended a nerve conduction study and EMG of the right upper extremity, in addition to an orthopedic consultation.

On May 30, 2012, claimant saw Sandra Barrett, M.D. Claimant complained of two incidents in which pieces of meat hit her, with her right arm being struck in March 2011 and her head being struck in June 2011. Claimant complained of tightness and knots into the neck and shoulder area all the way up to the base of the head, in addition to swelling and inflammation in her right hand. Claimant indicated activity increased her symptoms with her hand going cold and swelling with discoloration affecting the entire right upper extremity, although she noted the distal forearm seemed to be worse. Dr. Barrett diagnosed claimant with myofascial neck/shoulder pain and forearm pain suggestive of neuropathic/sympathetic involvement. Dr. Barrett prescribed a TENS unit home trial, Robaxin and Elavil.

On July 19, 2012, claimant returned to Dr. Barrett indicating some relief with the TENS unit and medication side effects. Dr. Barrett discontinued the medication. Dr. Barrett recommended purchasing the TENS unit and prescribed a trial of Neurax. Claimant's restrictions remained unchanged.

⁸ Stipulation (filed Sep. 10, 2014) at 29-30.

⁹ Stipulation (filed Sep. 10, 2014) at 39.

Claimant returned to Dr. Barrett on September 13, 2012, complaining of continued swelling in her fingers, wrists and arm. While Dr. Barrett noted claimant showed some improvement, claimant did not feel she could return to work without any restrictions. Dr. Barrett indicated claimant should avoid overhead activities, but needed to use her right upper extremity. Dr. Barrett's impression was myofascial neck and shoulder pain with questionable nerve/sympathetic involvement of the upper extremity. Dr. Barrett released claimant at maximum medical improvement. Dr. Barrett recommended purchasing a TENS unit and continue Neurolax. Dr. Barrett imposed permanent restrictions of a 5-pound weight limit with the right upper extremity and no over shoulder activities.

On October 15, 2012, claimant was seen at her attorney's request by Pedro Murati, M.D., who is board certified in physical medicine, rehabilitation, electrodiagnosis and independent medical evaluations. Claimant told Dr. Murati her February 11, 2011 accident involved a piece of meat hitting her right arm and her June 2011 accident involved a piece of meat hitting her head. Claimant complained to Dr. Murati about headaches, pain and swelling in right arm, right shoulder pain, right clavicle pain, neck pain, upper back pain, jaw pain when yelling and shouting, difficulty eating apples due to jaw pain, difficulty sleeping due to right shoulder pain and her right arm and fingertips were sensitive to touch. Claimant denied any preexisting conditions. Dr. Murati diagnosed claimant with right carpal tunnel syndrome, right rotator cuff sprain versus tear, probable right upper extremity chronic regional pain disorder, and myofascial pain syndrome affecting the bilateral shoulder girdles extending into the cervical and thoracic paraspinals. Dr. Murati suggested various work restrictions.

Dr. Murati assigned claimant a 25% whole person impairment pursuant to the AMA *Guides*¹⁰ (hereafter *Guides*), 4th Edition, as follows: 5% whole body impairment for the myofascial pain syndrome affecting the cervical paraspinals under Cervicothoracic DRE Category II; 5% whole body impairment for the myofascial pain syndrome affecting the thoracic paraspinals under Thoracolumbar DRE Category II; 10% right upper extremity for loss of range of motion of the right shoulder; and 20% right upper extremity for continued right upper extremity pain arising from the chronic regional pain disorder. Dr. Murati noted claimant's three accidents resulted in neck, right upper extremity and upper back pain, but he did not specifically associate claimant's impairments as due to any one or all of the accidental injuries.

On November 20, 2012, Dr. Barrett assigned claimant a 10% functional whole person impairment pursuant to the *Guides* based on a 5% whole person impairment for the myofascial neck and shoulder pain and a 5% whole person impairment for sympathetic nerve pain, using page 56.

¹⁰ American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based on the fourth edition of the *Guides*.

On January 9, 2013, the judge ordered an independent medical examination with Paul Stein, M.D. Claimant saw Dr. Stein on March 25, 2013. Claimant told Dr. Stein the first accident involved a piece of meat falling and hitting her right elbow and forearm and involved no areas of pain except her right shoulder and upper extremity. She told him the June 2011 accident involved a piece of meat hitting her on the head and the third accident involved her right hand and wrist from using a hook.

Claimant complained to Dr. Stein about pain in her neck, right shoulder, entire right upper extremity and upper back. She also reported temporomandibular joint pain when biting into something firm such as an apple. She noted burning pain in the right hand constantly affecting primarily the back of the hand and wrist. She reported being unable to lift heavy items because of right upper extremity pain. She also reported finger numbness and tingling when resting her right forearm on a hard surface.

Dr. Stein indicated claimant's symptoms were primarily soft tissue in nature and some of her symptomatology is related to strains/sprains from falling objects and some from repetitive activity. Dr. Stein found no objective evidence of complex regional pain disorder and he noted no trophic changes in claimant's skin, hair or nails and no discoloration, swelling or temperature change in the right upper extremity. Dr. Stein stated, "Ms. Holguin may have a carpal tunnel syndrome on the right which would be related to her [repetitive] work activity but not to any of the three specific incidents described."¹¹ Dr. Stein imposed various permanent work restrictions. Dr. Stein assigned a 13% functional whole person impairment pursuant to the *Guides* as follows:

- 5% functional whole person impairment under Cervicothoracic DRE Category II which included the extension of discomfort into the upper thoracic and shoulder girdle musculature; and
- 6% impairment to the right upper extremity for decreased flexion; 1% impairment to the right upper extremity for decreased extension; 5% impairment to the right upper extremity for decreased abduction and 2% impairment to the right upper extremity for decreased internal rotation. These impairments result in a combined 14% impairment to the right upper extremity which converts to an 8% whole person impairment.

Dr. Murati testified on April 14, 2014, in accordance with his report. Dr. Murati indicated the shoulder MRI revealed a partial rotator cuff tear, but the cervical spine MRI was unremarkable. Dr. Murati stated claimant had chronic regional pain disorder because her right arm was swollen and tender and became dusky than her left arm during his examination. The doctor agreed claimant's chronic regional pain disorder may have improved by the time of Dr. Stein's evaluation.

¹¹ Stein Report (March 25, 2013) at 6.

At the July 9, 2014 regular hearing, claimant complained of continuous pain in her head, neck, right shoulder, right forearm and upper arm. Claimant testified her February 11, 2011 accidental injury was the cause of her head, neck and right arm pain. She reported difficulty turning her head, looking up and down, lifting and moving her right arm and gripping things with her right hand. She reported pushing, pulling, holding things, working without any rest and lifting heavy items makes the pain worse. She continues to work for respondent pulling fat off a belt. Claimant no longer has the TENS unit and is not currently being prescribed any medication. On cross-examination, claimant stated the piece of meat that hit her on February 11, 2011, “barely missed” or “barely grazed” her hard hat and landed on her right forearm.¹²

In pertinent part, the judge’s decision stated:

After the February 2011 accident, the claimant reported improvement in her symptoms and that she did not need to take any medication. She was found to be at maximum medical improvement on March 2nd and released without restrictions. The claimant indicated that she continued to seek treatment with the nurses' station, but the next notation in their records is in June, 2011, subsequent to her June 16th accident. After the June 16th accident, the claimant was evaluated on the 17th at which time she had severe muscle spasms throughout her C-spine, paraspinals and into the upper traps. She also had limited range of motion. The claimant's third accident with a date of July 12th, 2011 was to a wrist and thumb. She was diagnosed with carpal tunnel, but Dr. Stein stated that it didn't relate to any of the 3 reported accidents. The claimant received treatment from Dr. Barrett and was ultimately found to be at maximum medical improvement in September of 2012. She was provided permanent restrictions and ratings. Based on this evidence, it is found that the claimant's neck and shoulder impairments are as a result of the June 16th, accident. That accident is the prevailing factor causing her neck and shoulder injuries and her permanent disability. She suffers no impairment as a result of the February 11th, 2011 accident nor the July 12th, 2011 accident.

Dr. Stein, the court ordered evaluator was the most recent evaluator. There was testimony that the claimant's conditions could improve or become worse, therefore, it is found that his opinion as to the claimant's impairments is the most reliable. The claimant suffers a 13% permanent partial impairment to the body as a whole.¹³

Claimant filed a timely appeal.

¹² R.H. Trans. at 24-25.

¹³ ALL Award at 6.

PRINCIPLES OF LAW

An employer is liable to pay an employee compensation where the employee sustains personal injury by accident arising out of and in the course of employment. It is claimant's burden to prove the right to an award by a preponderance of the evidence.

The trier of fact must decide which testimony is more accurate and/or credible and adjust medical, lay and other testimony that may be relevant to the question of disability. The trier of fact is "free to consider all of the evidence and decide for itself the percentage of disability. The numbers testified to by the physicians are not absolutely controlling."¹⁴

ANALYSIS AND CONCLUSIONS

The Board adopts and affirms the Award's reasoning and findings. The majority of the evidence points to the June 16, 2011 accident as being the cause of claimant's impairment. Dr. Stein's assigned 13% whole body rating is a fair assessment of claimant's impairment.

AWARD

WHEREFORE, the Board affirms the September 18, 2014 Award.

IT IS SO ORDERED.

Dated this _____ day of January, 2015.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

¹⁴ *Tovar v. IBP, Inc.*, 15 Kan. App. 2d 782, Syl. ¶ 1, 817 P.2d 212, rev. denied 249 Kan. 778 (1991).

SOLEDAD HOLGUIN

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**DOCKET NOS. 1,056,891;
1,056,892 & 1,056,893**

c: Stanley R. Ausemus
kathleen@sraclaw.com

D. Shane Bangerter
shane@rbr3.com

Honorable Pamela Fuller